

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

GABRIELLE GARCIA, :  
: Petitioner :  
: VS. : NO. 5:02-CR-60 (WDO)  
: :  
UNITED STATES OF AMERICA, :  
: Respondent : **ORDER**

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Before the Court is petitioner **GABRIELLE GARCIA'S** notice of appeal (Tab # 33) from the Court's November 7, 2007 order, which adopted United States Magistrate Judge G. Mallon Faircloth's recommendation that petitioner's 28 U.S.C. § 2255 motion be denied. The Eleventh Circuit Court of Appeals has mandated that the Court construe petitioner's notice of appeal as an application for a certificate of appealability ("COA") pursuant to 28 U.S.C. § 2253(c). *Edwards v. United States*, 114 F.3d 1083 (11th Cir. 1997). Under section 2253(c), a COA may issue only if the applicant has made a substantial showing of the denial of a constitutional right.

For the reasons stated in Magistrate Judge Faircloth's recommendation and this Court's order accepting the same, the Court finds that petitioner has not made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Accordingly, the application for a COA is **DENIED**.

Also before the Court is petitioner's motion for leave to proceed *in forma pauperis* on appeal (Tab # 83). Said motion is **DENIED AS MOOT**.

**SO ORDERED**, this 30<sup>th</sup> day of January, 2008.

s/ *Hugh Lawson*  
HUGH LAWSON, CHIEF JUDGE  
UNITED STATES DISTRICT COURT